

(2) The nursing facility shall offset all payments made by the Department under a grant against the allowable cost of the exceptional DME and related services and items paid by the grant.

(3) The nursing facility shall identify and report in the MA-11, the costs related to the acquisition of exceptional DME and related services and items, the adjustment to the amount identified in the grant, and the offset of the payment made by the Department under the grant using the accrual basis of accounting.

(d) *Payment in full.* A grant does not waive the preclusion on supplementation established by law. Payment made by the Department under a grant is payment in full for nursing facility services involving the exceptional DME and any related services and items. The entire payment for all MA nursing facility services provided to the resident, including the exceptional DME and any related services and items shall include both of the following:

(1) The nursing facility's case-mix per diem rate.

(2) The exceptional payments authorized by the grant.

(e) *Utilization review.* Nursing facility services paid by a grant are subject to utilization review by the Department, including assessments of the resident's continuing need for the exceptional DME.

(f) *Dispute resolution.* A dispute relating to a grant, including a dispute relating to payments which the nursing facility believes are authorized by the grant and a dispute arising from the termination, suspension, or recovery actions taken under § 1187.157 (relating to termination or suspension of exceptional DME grants and recovery of exceptional payments), shall be brought initially and exclusively for adjudication to the Department's Bureau of Hearings and Appeals.

(g) *Records.* In addition to the nursing facility's existing obligations to maintain and provide documents and records, a nursing facility receiving a grant shall maintain and, upon request, provide to the Department additional documents and records as may be necessary for the Department to determine the nursing facility's compliance with this subchapter and the terms of the nursing facility's grant, including documents and records as may be necessary for the Department to determine the maximum allowable cost of the exceptional DME as specified in § 1187.155(b) (relating to exceptional DME grants - payment conditions and limitations)

(h) *Term of the grant.* A grant is effective on the date specified in the nursing facility's grant and ends on the date the grant is terminated under § 1187.157.

(i) *Acquisition, maintenance, use and disposal of exceptional DME.*

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- (1) A nursing facility shall obtain exceptional DME and related services and items paid by a grant at the lowest practicable cost and shall purchase by means of competitive bidding whenever required by law.
- (2) Unless otherwise approved in writing by the Department, a nursing facility may use exceptional DME paid by a grant only as specified by the nursing facility's grant.
- (3) Except as specified otherwise in paragraph (5), a nursing facility has title to any exceptional DME and related items purchased by the nursing facility under the grant.
- (4) If an item of exceptional DME purchased under a grant is no longer necessary to provide care and services to the resident, and subject to paragraph (2), the nursing facility shall make the item available for the use, as necessary, in the care and treatment of other MA residents of the nursing facility unless directed by the Department to transfer the exceptional DME in accordance with paragraph (5).
- (5) Upon termination of a grant, the Department may direct that the nursing facility transfer the exceptional DME and related items to another provider designated by the Department or to the resident. Title to the transferred exceptional DME and related items shall then vest in the designated provider or the resident. If a transfer is required under to this paragraph, § 1187.61(c)(1) (relating to movable property cost policies) does not apply.
- (6) A nursing facility shall, in accordance with sound business practice, maintain and administer a program for the maintenance, repair, protection, preservation and insurance of exceptional DME paid by a grant.
- (7) If a nursing facility is indemnified, reimbursed or otherwise compensated for any loss, destruction or damage to exceptional DME paid by a grant, the nursing facility shall, at the Department's direction, use the proceeds to replace, repair or renovate the property involved.

§ 1187.155. Exceptional DME grants -- payment conditions and limitations.

(a) *Authorization of exceptional payments.* Exceptional payments authorized by an exceptional DME grant will be paid as follows:

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(1) *Periodic payments.* Unless the grant authorizes a lump sum payment under paragraph (2), the grant will authorize exceptional payments to the nursing facility on a specified periodic basis. Authorization for periodic payments will continue during the term of the nursing facility's grant except during a period of suspension as specified in § 1187.157 (relating to termination or suspension of exceptional DME grants and recovery of exceptional payments).

(2) *Lump sum payment.* The grant may authorize a lump sum exceptional payment to the nursing facility if the Department determines that a lump sum payment is in the best interest of the MA Program. The amount of this payment will be based upon and limited by the necessary, reasonable and prudent costs incurred by the nursing facility to purchase exceptional DME and related items.

(b) *Maximum allowable payment.* The maximum allowable exceptional payment authorized by an exceptional DME grant is limited to the lowest of the following:

(1) The lower of the nursing facility's costs to acquire the exceptional DME and related services and items; or, in the event the nursing facility is acquiring the exceptional DME or related services and items from a related party as defined in § 1187.2 (relating to definitions), the related party's cost to furnish the exceptional DME and related services and items to the nursing facility.

(2) The applicable MA outpatient fee schedule amount, if any.

(3) Eighty percent of the amount, if any, that would be approved by Medicare if the DME or service or item were a Medicare Part B covered service or item.

(c) *Additional conditions and limitations.* Exceptional payments made by the Department to a nursing facility under a grant are subject to the following:

(1) The conditions and limitations set forth in Chapter 1101 (relating to general provisions), including §§ 1101.64 and 1101.68 (relating to third-party medical resources; and invoicing for services).

(2) The terms of the nursing facility's grant.

§ 1187.156. Exceptional DME notification and reporting requirements.

(a) *Status reports.* A nursing facility receiving a grant shall submit periodic status reports to the Department as specified in the nursing facility's grant.

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(b) *Notices.* A nursing facility receiving a grant shall notify the Department in writing within 5 days of any of the following occurrences:

- (1) The resident dies.
- (2) The resident ceases to be MA eligible.
- (3) The resident is transferred or discharged from the nursing facility, whether or not there is intent to return.
- (4) The nursing facility determines, or is advised by the resident's attending physician, that the exceptional DME is no longer medically necessary.
- (5) The resident notifies the nursing facility in writing that he exercises his right to refuse use of the exceptional DME.
- (6) The nursing facility ceases to use the exceptional DME or make that DME available to the resident in the course of providing nursing facility services to the resident.

§1187.157. Termination or suspension of exceptional DME grants and recovery of exceptional payments.

(a) *Termination or suspension of an exceptional DME grant.*

(1) *Automatic termination.* Any of the following conditions shall cause termination of a nursing facility's grant without further notice or action by the Department:

- (i) The resident dies.
- (ii) The resident ceases to be MA eligible.
- (iii) The resident is transferred or discharged from the nursing facility with no intent to return.
- (iv) The resident's attending physician notifies the nursing facility that the exceptional DME is no longer medically necessary.
- (v) The resident notifies the Department or the nursing facility in writing that he exercises his right to refuse use of the exceptional DME.
- (vi) The nursing facility is no longer enrolled in the MA Program.

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(2) *Termination upon notice.* The Department may terminate a grant upon written notice to the nursing facility if any one or more of the conditions in subparagraphs (i) - (vi) occur. The Department will simultaneously provide a copy of the written notice to the resident and the resident's authorized representative, if any.

(i) The Department determines that the exceptional DME is no longer medically necessary.

(ii) The resident is temporarily discharged or transferred to a hospital or other health care provider.

(iii) There is a change in state or federal law or regulations governing payments to MA providers of nursing facility services.

(iv) Exceptional DME payments are no longer authorized under the Commonwealth's approved Medicaid State Plan.

(v) The nursing facility has violated the terms of the grant.

(vi) The nursing facility changes ownership.

(3) *Suspension of grant payments.* The Department may suspend payments under a grant upon written notice to the nursing facility if one or more of the conditions in subparagraphs (i) and (ii) occur. The Department will simultaneously provide a copy of the written notice to the resident and the resident's authorized representative, if any.

(i) The resident is temporarily discharged or transferred to a hospital or other health care provider.

(ii) The resident is absent from the nursing facility because of therapeutic leave.

(4) *Termination or suspension date.* A termination under paragraph (1) is effective as of the date on which the condition giving rise to the automatic termination first arises. A termination under paragraph (2) is effective on the date specified in the Department's written notice to the nursing facility. A suspension under paragraph (3) is effective on the date and for the period specified in the Department's written notice to the nursing facility.

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(5) *Effect of termination.*

- (i) Termination of an exceptional DME grant, whether automatic or by written notice, terminates the nursing facility's authorization to obtain exceptional payments for nursing facility services provided to the resident after the termination date.
- (ii) Termination of the grant ends the nursing facility's grant and the nursing facility's duty and obligation to comply with the terms of the grant or the requirements of this subchapter, except as may be otherwise specified in the grant or in this subchapter.
- (iii) Termination of a grant does not relieve the nursing facility of any of the nursing facility's duties and obligations relating to services provided to the resident or any other resident of the nursing facility.

(6) *Effect of suspension.*

- (i) Suspension of payments under a grant terminates the nursing facility's authorization to obtain exceptional payments for nursing facility services provided to the resident for the period specified in the notice of suspension.
- (ii) Suspension of payments under a grant does not terminate the nursing facility's grant or the nursing facility's duty and obligation to comply with the terms of the grant or the requirements of this subchapter.
- (iii) Suspension of payments under a grant does not relieve the nursing facility of any of the nursing facility's duties and obligations relating to services provided to the resident or any other resident of the nursing facility.

(b) *Recovery of exceptional DME grant payments.*

- (1) If a grant is terminated or if payments under a grant are suspended, the Department will recover any exceptional payments made to the nursing facility for services provided after the termination date or during the period of suspension.
- (2) If the nursing facility violates this subchapter or the terms of its grant, the Department may recover exceptional payments made to the nursing facility in addition to or instead of terminating the nursing facility's grant.

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(c) *Rights and remedies.* The rights and remedies available to the Department under this section are in addition to any rights, remedies and sanctions otherwise available to the Department under law and regulation

.§ 1187.158. Appeals.

(a) *Appeals.* An appeal may be filed by the resident or the resident's authorized representative, by the nursing facility, or by both, from the Department's decision to deny, terminate or suspend a grant, subject to the following:

(1) If the Department denies a grant because the DME is not exceptional DME, an appeal of the denial may be filed solely on the basis that the DME is exceptional DME as defined in § 1187.2 (relating to definitions).

(2) If the Department automatically terminates a grant under § 1187.157(a)(1) (relating to termination or suspension of exceptional DME grants and recovery of exceptional payments), an appeal of the termination may be filed solely on the basis that none of the conditions specified in § 1187.157(a)(1)(i) – (vi) has occurred.

(3) If a resident appeals the denial, termination or suspension of a grant, Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) applies.

(4) If a nursing facility appeals the denial, termination or suspension of a grant, § 1187.141(b), (d) and (e) (relating to nursing facility's right to appeal and to a hearing) apply.

(5) An appeal from the Department's decision denying a request for a grant shall be received in the Department's Bureau of Hearings and Appeals within 30 days of the date of the Department's written notice.

(6) If the resident or the nursing facility timely appeals the Department's decision to deny, suspend or terminate a grant, the Department's decision is not final until the Department issues a final adjudication on the appeal.

(b) *Effect of decisions:*

(1) *Effect on subsequent grant requests.* The denial or termination of a grant, does not prohibit a nursing facility from submitting a new request for an exceptional DME grant for the same resident, if the nursing facility determines that there has been a change in the resident's condition since the denial or termination.

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(2) Effect on services:

(i) If the Department determines that DME specified in the nursing facility's request is medically necessary but denies the request because the DME is not exceptional DME, the nursing facility shall, as a part of the nursing facility services that it provides to the resident, provide the DME to the resident, unless the resident refuses the DME, regardless of whether the nursing facility or resident appeals the Department's decision. If the resident refuses the DME, the nursing facility shall notify the Department in accordance with § 1187.22(17) (relating to ongoing responsibilities of nursing facilities).

(ii) If the Department determines that the DME specified in the nursing facility's request is exceptional DME but denies the request because the DME is not medically necessary, the nursing facility may provide the DME and charge the resident in accordance with and subject to applicable federal and state requirements, including 42 CFR § 483.10(c)(8) (relating to resident rights) and § 1101.63(a) (relating to payment in full), if, after receiving actual notice of the Department's denial, the resident requests that the nursing facility provide the DME. If the resident or nursing facility appeals the Department's determination to deny the exceptional DME grant and the appeal is sustained, the nursing facility shall refund any payment made by the resident within 60 days from the date of the Department's final adjudication sustaining the appeal.

(iii) If the Department terminates a grant or suspends payment under a grant under § 1187.157(a)(2) and (3) (relating to termination or suspension of exceptional DME grants and recovery of exceptional payments), and the resident or the resident's authorized representative appeals the termination or suspension within 10 calendar days of the date on which the Department's notice was mailed, the Department will continue to make payments under the grant pending the outcome of the hearing on the resident's appeal. If, after the hearing, the Department denies the resident's appeal, the Department will recover any payments made under the grant on or after the termination date or during the period of suspension specified in the Department's notice.

(iv) If the Department terminates a grant or suspends payment under a grant under § 1187.157(a)(2) and (3), and the resident or the resident's authorized representative does not appeal the termination or suspension, or appeals more than 10 calendar days

from the date on which the Department's notice was mailed, the Department will cease payments under the grant on the termination date or during the period of suspension specified in the Department's notice.

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